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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,011	08/02/2005	Ralph Patrick Braun	036481-0165	8838

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FOLEY AND LARDNER LLP
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WASHINGTON, DC 20007

EXAMINER

SHEN, WU CHENG WINSTON

ART UNIT	PAPER NUMBER
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1632

MAIL DATE	DELIVERY MODE
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01/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/529,011

Examiner

Wu-Cheng Winston Shen

Applicant(s)

BRAUN, RALPH PATRICK

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 19 October 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 4(e) Other: Continuation of 4(e) Other: Claims 39-41 are marked as withdrawn claims in the reply filed by Applicant on 10/19/2007. However, claims 39-41 are part of elected Group I that includes a coated particle suitable for delivery from a particle-mediated delivery device, which particles comprise carriers particles coated with a nucleic acid construct, wherein the construct comprises viral genomic nucleic acid (See bridging paragraph, pages 2-3 Restriction Requirement dated 10/18/2007). Accordingly, claims 39-41 were examined and rejected in this aspect pertaining to claim 1, which reads on an isolated nucleic acid construct comprising HSV genomic nucleic acid, and claim 37, which reads on a method of generating a nucleic acid construct comprising HSV genomic nucleic acid, in the Non-Final office action dated 04/19/2007. The Examiner notes that the preamble of claim 36 is a method of nucleic acid immunization, which does not read on the limitation recited in claim 39 pertaining to coated particles "generated by a method as defined in claim 36". Claim 36 is not drawn to a method of generating coated particles. Claim 40 and 41 depend from claim 39.

/Valarie Bertoglio, Ph.D./
Primary Examiner
AU 1632